IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 1009 of 2006(T)

PETITIONER:

LIJO JOSEPH, S/O. JOSEPH,
ORMA MARBLE PALACE, FEROKE, KOZHIKODE.

BY ADV. SRI.K.J.JOSE
SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT
(COMMERCIAL TAXES), SECRETARIAT,THIRUVANANTHAPURAM

2. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

3. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, KOZHIKODE.

4. THE INTELLIGENCE OFFICER,
SQUAD NO.II, COMMERCIAL TAXES, KOZHIKODE.

5. THE DEPUTY TAHSILDAR (REVENUE RECOVERY),
KOZHIKODE.

BY GOVERNMENT PLEADER SRI.C.K. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27/07/2007, ALONG WITH WPC NO. 14630 OF 2006
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WPC 1009/06)

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE PROCEEDINGS OF THE INTELLIGENCE INSPECTOR, COMMERCIAL TAXES, PALAKKAD DATED 29.8.1998

EXT.P2 TRUE COPY OF THE PROCEEDINGS OF THE 4TH RESPONDENT DATED 5.4.2002

EXT.P3 TRUE COPY OF THE MEMORANDUM OF REVISION PETITION FILED BY THE PETITIONER BEFORE THE THIRD RESPONDENT DATED 18.6.2002

EXT.P4 TRUE COPY OF THE JUDGMENT IN OP NO. 24967 OF 2002 DSATED 3.9.2002

EXT.P5 TRUE COPY OF THE ORDER PASSED BY THE THIRD RESPONDENT IN THE REVISION PETITION DATED 20.1.2003

EXT.P6 TRUE COPY OF THE MEMORANDUM OF THE SECOND REVISION DATED 24.2.2003

EXT.P7 TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT IN THE REVISION PETITION BEFORE HIM DATED 14.9.2004

EXT.P8 TRUE COPY OF THE REVENUE RECOVERY NOTICE ISSUED BY THE 5TH RESPONDENT DATED 3.1.2006

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 1009 & 14630 OF 2006

Dated this the 27th day of July, 2007

JUDGMENT

Connected cases are filed by sister concerns run by brothers engaged in the business of purchase and sale of marble. Orders under challenge are issued under Section 45A of the KGST Act levying penalty for evasion of sales tax for the year 2001-02. Marble during the year was an item taxable at the point of first sale in the State. On going through the impugned orders in both the cases, it is proved beyond doubt that one of the petitioner purchased marble from outside the State and was selling the same to the other sister concern, namely, the petitioner in the other W.P. that too after undervaluing the goods by reducing the freight charges substantially. Purchasing concern was entitled to exemption as their sales were second sales. Besides the evasion of tax practised through undervaluation and sale between two sister concerns, it was also found that accounts maintained were not full and complete. The inspection carried out in the business premises of the petitioner in W.P.C. No. 1009 of 2006 and the subsequent

verification revealed that two sets of accounts were maintained for the same transaction. Further on verification of the physical stock with the accounted stock, substantial variation was noticed. This is in addition to other irregularities found by the Intelligence Officer. So far as petitioner in WPC 14630 of 2006 is concerned, it was engaged in transport of marble from Rajasthan in heavy loads upto 25 tonnes. All the transport accounts were only for 9 tonnes at a flat rate payment of Rs. 19,000/- per load. The department after verifying the accounts with reference to stock and the exact quantity transported found that the freight that would have been incurred by the petitioner was Rs. 2300/- for transport of every tonne of marble. In fact suppression noticed alone is above Rs. 57 lakhs. In the circumstances, and in view of the clear cut finding of evasion of tax found concurrently by three authorities, I do not think there is any scope for interference with the findings on evasion of tax.

2. Counsel for the petitioners cited several instances of allegation of undervaluation at the checkpost and even the petitioner in WPC 14630 of 2006 offered to sell the goods to the Department at the

declared rates. I do not think this Court can go into those facts while considering these cases. Even though counsel for the petitioners contests the findings on facts by all the authorities, I find findings are based on evidence substantiated through records and through estimation which is based on tenable data collected by the department after verifying the records. Both the petitioners were admittedly sister concerns and were engaged in business in the same place. Counsel for the petitioners also cited the decision of Division Bench of this Court in PAULSON TRADERS V. STATE OF KERALA, (2003) K.L.T. SN 40 (case no. 56). On going through the decision, I find that was a case of transport of goods without documents and this Court on facts held that that was not a fit case for levying maximum penalty. However, facts in this case proved beyond doubt that parties colluded themselves and operated business in such a way as to evade tax. However, one redeeming aspect is the fact that one of the petitioners stopped business after the relevant year which obviously means that the petitioners have discontinued the practice of inter-party sale between the sister concerns. Even though there is no scope for interference with the

findings, quantum of penalty, etc., I feel the single fact that they discontinued the practice of collusion and evasion of tax will justify some leniency in penalty, more so when maximum penalty is levied in both the cases.

In the circumstances, W.Ps. are disposed of modifying penalty orders confirmed in revisions by reducing the penalty by Rs. 1 lakh each. In W.P.C.No. 1009 of 2006, the penalty is reduced from Rs. 9 lakhs to Rs. 8 lakhs and in W.P.C.No. 14630 of 2006 penalty is reduced from Rs. 15 lakhs to Rs. 14 lakhs.

(C.N.RAMACHANDRAN NAIR)
Judge